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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,401	02/16/2004	J. Mark Morrow	031599/260283	1618

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EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,401

Applicant(s)

MORROW, J. MARK

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on: ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/16/04</u> . | 6) <input type="checkbox"/> Other: ____. |

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the domed portion has incorporated therein a desiccant as recited in claims 8 and 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10, 11, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dischler (6,564,934) in view of Castillo (6,412,526). Dischler discloses a container assembly in the embodiment of Figures 10 and 11 comprising a container (110) including a bottom wall and a tubular side wall having a top edge encircling a top opening of the container and a cap (100) having a rim configured to engage the top edge of the container and a top wall (18) defining a storage compartment (102, 103) in an underside of the top wall and a membrane (22) attached to the underside of the top wall of the cap covering the storage compartment for sealing a product contained in the storage compartment. The top wall having a substantially horizontal annular portion radially inward of the rim and surrounding the storage compartment, a cross-cut (108) adapted to receive a straw. Dischler also discloses the other claimed limitations except for the membrane being removable. Castillo teaches a cap (210) comprising a compartment for holding a product and a membrane removably attached to an underside of the compartment for sealing the product in the compartment (Figure 2A). It would have been obvious to one having ordinary skill in the art in view of Castillo to modify the cap of Dischler so the membrane is removable to allow the user to remove the membrane prior of attaching the cap to the container.

As to claims 11 and 14, see Figure 11 of Dischler.

As to claim 16, Dischler discloses the membrane formed from aluminum foil which is relatively impermeable to moisture.

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4. Claims 1-4, 7, 9, 17-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 10 above, and further in view of Shrader (6,311,840).

Dischler further fails to show a drinking aperture in lieu of the cross-cut. Shrader shows a container (40) having a drinking aperture (I) for receiving a drinking straw (44) (Figure 8). It would have been obvious to one having ordinary skill in the art in view of Shrader to modify the cap of Dischler so it comprises a drinking aperture (defined when the straw is forced through the cross-cut) to allow the user to drink the mixing product.

As to claims 2-4, 7, 19 and 20, Dischler discloses a skirt defined a grip surface and the skirt extended below a lowermost surface of the top wall of the cap (Figure 11).

As to claims 9 and 22, Dischler discloses the membrane formed from aluminum foil which is relatively impermeable to moisture.

5. Claims 5, 6, 12, 13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 10 and 18 above, and further in view of Reidinger et al. (6,311,860; hereinafter Reidinger'860). Dischler as modified further fails to show the skirt includes a plurality of spacers. Reidinger'860 shows a cap (30) for engaging a rim of a container comprising a skirt (36) having a plurality of spacers (42) extending along an inner surface of the skirt (Figure 2). It would have been obvious to one having ordinary skill in the art in view of Reidinger'860 to modify the cap of Dischler so the skirt includes a plurality of spacers extending along an inner surface of the skirt for better securing the cap to the rim of the container.

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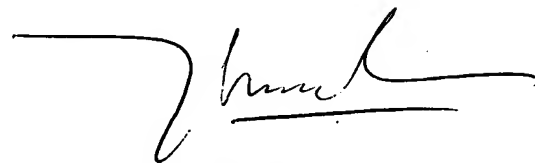
6. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 10 and 18 above, and further in view of Cullen ((3,722,188). Dischler further fails to show the storage compartment comprises a desiccant. Cullen teaches a cap (17) having a desiccant capsule (10). It would have been obvious to one having ordinary skill in the art in view of Cullen to modify the storage compartment of Dischler as modified so the storage compartment includes a desiccant for absorbing moisture within the container.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.

lkb
November 9, 2005



Luan K. Bui
Primary Examiner